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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,337	03/18/2004	Michel Valentini	251-IUS	3748
5568	7590	12/08/2006	EXAMINER	
JACK PAAVILA			DEVOTI, PAUL D	
BOX 1151			ART UNIT	
ALEXANDRIA, KOC IAO			PAPER NUMBER	
CANADA			3637	

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/802,337	<b>Applicant(s)</b> VALENTINI, MICHEL	
	<b>Examiner</b> Paul Devoti	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,6 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,6 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

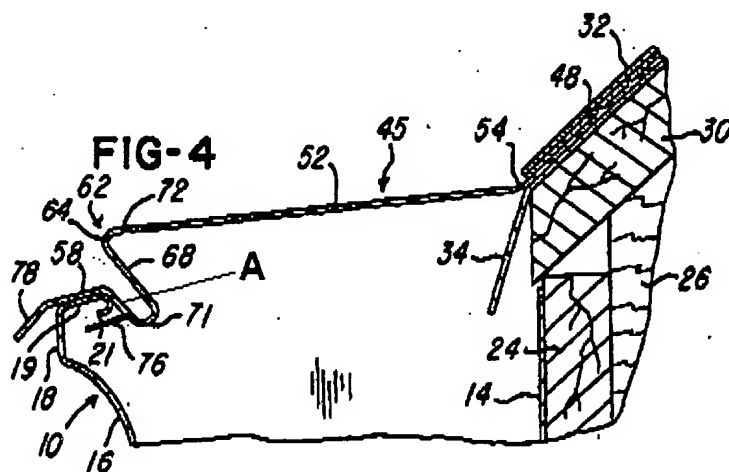
1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brochu (US 2004/0187394) in view of Meckstroth (US 6412228).
3. Regarding claim 1, Brochu discloses a gutter cover obviously capable of being used with a gutter having a top, outer lip that has a downwardly and outwardly curved end section. The gutter cover comprises a main elongated section (72), an outer side section (90), and an inner side section (82) on the other side of the main section (72). The main section (72) has perforations (74). The inner side section comprises a slot (84) that opens away from the main section, with a flexible flap (86) that is mounted in the slot (84) and extends away from the main section (72). The outer side section (90) has a channel, but Brochu does not disclose the outer side section defines a channel that opens away from the main section, with the channel defined by a top wall, bottom wall, and end wall joining the top and bottom walls along the length of the cover. Additionally, Brochu does not disclose the bottom wall of the channel is shorter than the top wall, and that the cover has a wall that forms a gripping surface.

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4. Meckstroth, however, discloses a gutter cover comprising a channel that opens away from a main section (45, 68, 71). The channel is defined by a top wall (58), a bottom wall (16), and an end wall (A) joining the top and bottom walls along the length of the cover. The bottom wall (16) of the channel is aligned with the main section (45, 68, 71) and is shorter than the top wall (58). The bottom wall (16) is spaced from the top wall (58), and the channel fits over the outer lip of a gutter. The inner surface of the end wall (A) forms a gripping surface, and could obviously be used to pull the channel over an outer lip of a gutter. It would have been obvious to one having ordinary skill in the art at the time of invention to replace the outer channel of Brochu's gutter cover with a channel as taught by Meckstroth, as this would provide a secure attachment for a gutter cover to an outer lip of a gutter.



Meckstroth (US 6412228) Figure 4

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5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brochu (US 2004/0187394) in view of Meckstroth (US 6412228) as applied to claim 1 above, and further in view of Herren (US 5566513).

6. Regarding claim 6, Brochu in view of Meckstroth discloses everything previously mentioned, but does not disclose the bottom wall has a retaining means on its top surface near its outer end. Herren, however, discloses a gutter guard apparatus comprising an outwardly opening channel. The bottom wall of the channel (26) comprises a retaining means (27) on its top surface near its outer end. It would have been obvious to one having ordinary skill in the art at the time of invention to modify Brochu's gutter cover, already modified by Meckstroth, to include a retaining means on the bottom wall of the channel, as this would provide further means for securing the gutter cover to an outside lip of a gutter.

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brochu (US 2004/0187394) in view of Meckstroth (US 6412228).

8. Regarding claim 14, Brochu in view of Meckstroth discloses everything previously mentioned, but does not disclose the gutter cover is made from painted aluminum and coated with polyester. It would have been obvious to one having ordinary skill in the art at the time of invention to make the gutter cover from painted aluminum and coated with polyester, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

***Response to Arguments***

9. Applicant's arguments filed on 11 October 2006 have been fully considered but they are not persuasive.
10. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Devoti whose telephone number is 571-272-2733. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PD

12/01/06

LANNA MAI  
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